

<div>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 10-11-02 Item: 4.c	
	File Number CP02-026	
	Application Type Conditional Use Permit	
	Council District 6	
	Planning Area South San Jose	
	Assessor's Parcel Number(s) 459-04-003	
PROJECT DESCRIPTION		
Completed by: Darren McBain		
Location: North side of Capitol Expressway approximately 200 feet easterly of Old Almaden Road		
Gross Acreage: 4.5 Net Acreage: 4.5 Net Density: n/a		
Existing Zoning: CG Commercial General Existing Use: Automobile dealership (Capitol Ford)		
Proposed Zoning: No change Proposed Use: Demolition of existing buildings and construction of an approximately 65,200-square-foot automobile sales and service facility		
GENERAL PLAN		
Completed by: DM		
Land Use/Transportation Diagram Designation General Commercial		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING		
Completed by: DM		
North: Single-family detached residences (under construction)		A(PD) Planned Development
East: Automobile dealership (Bob Lewis VW)		CG Commercial General
South: Automobile dealership (Capitol Dodge)		CG Commercial General
West: Guadalupe River, Old Almaden Road		N/A
ENVIRONMENTAL STATUS		
Completed by: DM		
<input type="checkbox"/> Environmental Impact Report <input type="checkbox"/> Negative Declaration circulated on <input checked="" type="checkbox"/> Negative Declaration adopted on October 8, 2002		<input type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete
FILE HISTORY		
Completed by: DM		
Annexation Title: Robertsville No. 37		Date: 12/17/1973
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial		Date: _____ Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation
OWNER	APPLICANT/DEVELOPER	
Simon Kleinman P.O. Box 2909 Saratoga, CA 95070	Sonic Facilities Group P.O. Box 933 Talent, OR 97540	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Darren McBain

Department of Public Works

See attached memo

Other Departments and Agencies

See attached memos

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Sonic Facilities Group, is requesting a Conditional Use Permit to allow demolition of an existing auto dealership (Capitol Ford) and construction of a new full-service auto dealership on a 4.5-acre site. Vehicle servicing and car washes are conditional uses in the commercial zoning districts. Nearby land uses include a single-family “detached townhouse” residential project (recently approved and under construction) to the north of the property, and automobile dealerships to the east and south of the site. The Guadalupe River and Old Almaden Road are located to the west of the site.

Project Description

The proposed dealership is a 65,200-square-foot, single-story structure that includes showrooms, offices, 56 indoor service bays, and car and truck washing facilities. A total of 149 surface parking spaces for customers and employees are proposed. All of the existing structures on the site are proposed to be demolished and replaced by the proposed building and surface parking area. Construction of the project would be phased to allow the primary existing structure to remain in place while the new facility is being built.

In addition to the new construction, the proposed project includes the creation of a landscaped riparian buffer along the site’s interface with the Guadalupe River, and landscaping along the project’s Capitol Expressway frontage. The project also includes abandonment of the segment of Old Hillsdale Avenue that abuts the north side of the site. Old Hillsdale Avenue, which now dead-ends at the Guadalupe River, no longer serves as a viable public street and is presently used for car storage by the nearby auto dealerships. Please refer to the Analysis section of this staff report, below, for discussion of these elements of the project.

ENVIRONMENTAL REVIEW

An Initial Study was prepared for this project and the Director of Planning circulated a Negative Declaration (ND) for public review on September 18, 2002, and the ND was adopted on October 8, 2002. Adoption of an ND indicated that the project will have no unmitigated significant adverse impacts on the environment. The key issues addressed included the potential impacts of traffic generated by the proposed project, the possible existence of archaeological resources on the site, potential noise impacts on adjacent residential land uses, and the project's impact on the Guadalupe River and riparian biological resources. The project includes standard mitigation measures that will reduce any potentially significant impacts to a less-than-significant level.

Traffic

Most trips generated by auto dealerships occur outside of peak commute hours. For this project, the Public Works Department completed an in-house traffic analysis, estimating that the proposed project will generate 56 net PM peak-hour trips. Based on this estimate and the adequate existing traffic level of service (LOS) at nearby intersections, the Director of Public Works concluded that the project conforms to the City's Transportation Level of Service (LOS) Policy. No additional traffic analysis was required for the project.

Archaeology

The project site is located adjacent to the Guadalupe River, where nearby prehistoric settlement patterns were relatively intense. The site is within a potential archaeological resource zone as outlined on the maps on file at the Planning Department. Prior to field reconnaissance, maps and records at the California Historical Resources Information System, located at Sonoma State University, were consulted for any record of archaeological remains in and around the project area.

There are no recorded archaeological sites inside the boundaries of the Ford parcel, but there is one historical site recorded within 600 feet to the north. Approximately five years ago, archaeologists working for Archeotec of Oakland discovered human remains while monitoring construction activities at the housing project on the portion of the Rubino property located north of the new alignment of Foxworthy Avenue. A large concentration of human remains and other materials was discovered. An archaeological reconnaissance and subsurface testing (18 trenches) were conducted on the portion of the Rubino property between Foxworthy Avenue and Hillsdale Avenue, north of the project site, by Holman & Associates in 2001. Neither the reconnaissance nor the subsequent subsurface testing located any extension of the burials found north of Foxworthy Avenue. Another unassociated human burial was found at the intersection of Hillsdale Avenue and Pearl Avenue during a street improvement project; this burial was found at a depth, and at a sufficient distance from the earlier findings, that it either represents an isolated burial or is part of another larger complex of archaeological materials buried under the silts deposited by nearby Canoas Creek.

A field reconnaissance of the project site was not attempted, as the entire parcel is covered with buildings and pavement. However, the property has a high potential for containing buried archaeological material under the layers of material now covering the property. Silting from the Guadalupe River to the west, and possibly by Canoas Creek to the east, has buried what appears to have been a large contiguous prehistoric habitation area. Archaeological monitoring is required for

this project, in order to check for archaeological deposits in those areas where new construction will disturb soils below approximately 24 inches, which should eliminate the more recently disturbed soils that were impacted when the first Ford dealership was constructed. Should evidence of prehistoric cultural resources be discovered during monitoring, work will be stopped to allow adequate time for evaluation and mitigation. The material will be evaluated and, if it is determined to be significant, a mitigation program including collection and analysis of the materials prior to the resumption of grading, preparation of a report and curation of the materials at a recognized storage facility shall be developed and implemented under the direction of the Director of Planning, in a manner similar to the measures that were developed for the adjacent residential project.

Noise

The City of San Jose General Plan specifies a limit of 55 dB DNL at the property line of residential uses impacted by non-transportation related noise sources, such as commercial uses, trucking, loading area operations and/or mechanical equipment. Potential on-site noise sources for the proposed project include vehicle repair and preparation work (bay door raising, radio playing, pneumatic wrenches, vacuuming and detailing operations); car washer and dryer equipment; rooftop heating, ventilation, and air conditioning (HVAC) equipment, and new vehicle deliveries.

In order to help minimize the project's potential noise impacts on the adjacent residential property, the service bays are accessed from indoor drive aisles. The number of roll-up doors is minimized, and the doors are oriented away from the residential property to the north. The service bays cannot be directly accessed from the outside of the building. Some amount of noise "spillage" from the main auto service area and the three additional truck service bays is still likely to occur. However, the proposed configuration will prevent the potential noise from being directly oriented toward the nearby residences while allowing only minimal visibility, from the street, of the service area's interior. Consistent with other recently approved auto dealerships, an outdoor paging system or loudspeaker for communication with employees is not allowed under this permit.

The proposed project also includes an uninterrupted 12-foot-high masonry sound wall along the north property line that is shared with the adjacent residential site (see Analysis section). According to the noise report that was submitted for the project, the combination of the building's design and the noise-attenuating effects of the sound wall will be adequate to reduce the project's potential noise impacts to a level consistent with the City's noise standards.

Riparian Corridor

The project site abuts the Guadalupe River, which is identified as one of the City's more significant riparian corridors under the City's Riparian Corridor Policy Study. The Riparian Corridor Policy guidelines generally call for a vegetated setback of 100 feet from the top of bank or outside edge of riparian habitat, whichever is greater. The riparian setback is intended to protect riparian habitat values from direct and indirect human-induced impacts.

The site is currently paved and used for parking up to the top of the riverbank (i.e., no riparian setback is provided). The proposed project includes restoration and revegetation of a 30-foot-wide strip along the riparian corridor. Modifications to this portion of the site also include a new curb and

drainage pattern that will prevent stormwater runoff and pollutants from sheet-flowing directly into the river, as is currently possible. For purposes of environmental review and clearance under the California Environmental Quality Act (CEQA), the proposed layout represents an improvement over the existing configuration and a finding of “no significant impact” can be made with regard to the project’s impacts on riparian biological resources. Please refer to the Analysis section, below, for further discussion related to the project’s conformance to the City of San Jose’s Riparian Corridor Policy Study. Conformance to the policy is considered a “project” issue rather than an environmental issue for purposes of CEQA.

GENERAL PLAN CONFORMANCE

The proposed land use is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of General Commercial in the proposed use is commercial.

ANALYSIS

The primary focus of the analysis is the project’s level of conformance to the Zoning Ordinance, Commercial Design Guidelines (CDGs), and Riparian Corridor Policy Study (RCPS). As described in greater detail below, staff finds that the proposed project conforms to the Zoning Ordinance and is substantially consistent with the Riparian Policy. However, staff is recommending “conditional approval”⁷ of the proposed project because of several areas of inconsistency with the CDGs, as noted in greater detail below.

Zoning Ordinance Conformance

The proposed project conforms to the building setbacks and other development standards of the CG Zoning District. The Zoning Ordinance requires auto dealerships to provide one parking space per 350 square feet of enclosed showroom area, plus one additional parking space per 2,500 square feet of outdoor sales area, plus two spaces per service bay. The surface area to be used for display of for-sale vehicles is not considered “parking” and does not count toward the requirement. The proposed project provides 154 surface parking spaces, which is approximately 10% more than what the Zoning ordinance requires for the project.

Consistency with the Commercial Design Guidelines

The CDGs identify standards for achieving the level of design quality that is appropriate for new development in all areas of the City. Although the CDGs give special consideration to auto dealerships in some respects, the proposed project is inconsistent with some of the provisions that were intended specifically for dealerships.

Front Landscaping: The proposed site design includes a 10-foot-wide area of landscaping in the front setback area. However, the CDGs specify 15 feet as the appropriate amount of landscaping for outdoor vehicle display at auto dealerships. The applicant has expressed an unwillingness to comply with this portion of the design guidelines (see attached) that were written specifically to address

⁷ i.e., approval based on a requirement for subsequent plan revisions that the applicant has not provided

vehicle dealerships. The plans that were originally submitted by the applicant for this project included a 15-foot front landscaped area. Unrelated to Planning staff's comments on the proposal, the width of the landscaping was reduced to 10 feet on subsequent revised plans.

The proposed front landscaping only includes turf, although page 80 of the CDGs specifies that it should also include trees. While it is true that trees are not planted in the park strip or in most of the median island along Capitol Expressway, omitting trees from the (on-site) front setback area would conflict with the CDGs and contribute to a generally inadequate use of landscaping along the auto mall as it currently exists.

In discussions with staff, the applicant has argued that the landscaping requirement for this project should be similar to what was approved in recent years for other dealerships on Capitol Expressway. One dealership has received approval for substandard landscaping in the recent past, but it is unclear to staff what the reasons were for those actions, or why they should affect the present project and its level of conformance to citywide policies. The provision of 15 feet of front landscaping (including grass and trees), has been consistently achieved for recent dealership projects on Capitol Expressway and Stevens Creek Boulevard. Recent examples include the Honda project on Stevens Creek Boulevard, which was developed by the same applicant who is the proponent of the current project.

Signs: The CDGs for vehicle dealerships state (page 80) that detached signs should be no taller than 12 feet tall. The existing site configuration includes an older pole sign that does not conform to the Sign Ordinance with regard to its size, height, or location. Staff has indicated to the applicant that the existing sign should be shown on the plans as "to be removed" and replaced with signage that conforms to current standards. This is a standard requirement in the City of San Jose when a site is being substantially remodeled or completely redeveloped, as is the case with this project. The final plans that were submitted for the project do not address disposition of the existing free-standing sign.

Overview: Staff's recommendations for addressing the concerns identified above are included as conditions of approval, below. Apart from these issues, the site design substantially conforms to the CDGs. The architectural character is fairly standard for an automobile dealership, but does include an adequate amount of articulation and visible interest. The building materials and architectural treatment of the front façade wrap around the corner on both sides of the building to help reduce the appearance of boxiness. The project has a 27-foot height for most of the building mass, which is compatible with other nearby development.

The proposed project includes an uninterrupted 12-foot-high masonry sound wall along the north property line that is shared with the adjacent residential site. Although a wall of this height is generally undesirable, in this case the residential project was designed to "back up" to the wall so that an optimal amount of noise attenuation could be achieved with minimal aesthetic impacts. The height and location of the wall were coordinated with the developer of the adjacent residential project.

The wall includes a small amount of landscaping treatment on its front, and is set back far enough from Capitol Expressway so that it will not be a significant visual impact. The wall, and the site's back portion, will also be partially screened by a lower wall and landscaping located near the middle of the site. This intermediate wall will help reduce visibility of the employee parking and spaces for cars that are being serviced or stored.

The existing site conditions include a chain link fencing (with razor wire) along the rear of the site, abutting Old Hillsdale Avenue. The existing fencing, which does not conform to the municipal code of CDGs (p. 80) will be removed as a consequence of the new development, which includes abandonment of Old Hillsdale Avenue and relocation of the property line (see below for further discussion). The new fencing for the project does not include razor wire and conforms to the CDGs. Any subsequent revisions would require approval of a Permit Adjustment.

Conformance to the Riparian Corridor Policy Study

The City of San Jose's Riparian Corridor Policy Study guidelines generally recommend a vegetated setback of 100 feet from a building to the top of a river bank or the outside edge of a riparian habitat, whichever is greater. This setback is intended to protect the value of a riparian habitat from direct and indirect human-induced impacts. Although the RCPS recommends a 100-foot setback for typical new development, it also allows for a reduced minimum setback under limited circumstances where redevelopment of a site will facilitate a significant improvement over the existing riparian setback situation and there is no change in land use. The RCPS identifies 30 feet as the minimum acceptable setback under such conditions.

For this site, where an existing riparian setback is non-existent, the 30-foot setback was considered adequate, given the level of improvement that is being proposed and the relatively low potential habitat value of a site in this location. Although the Guadalupe River and associated riparian corridor does, however, provide for migration and regular movement for several aquatic and avian species, the site itself does not represent a substantial movement corridor or "stepping stone" for any native wildlife since it is located between two significant roadways (Capitol Expressway and Foxworthy Avenue) in close proximity to each other that cross over the river. A 100-foot riparian setback was required for the adjacent, recently approved residential project to the north of the site (File No. PDC02-025), and for earlier residential development across Foxworthy Avenue to the north (File No. PDC97-014). However, those projects were located on sites that were not already substantially developed, and where the 100-foot setback objective was more readily attainable.

The proposed riparian setback area will be planted with trees and shrubs that would occur naturally along this reach of the Guadalupe River. The lighting proposal for the project (by LSI Industries, dated February 26, 2002) establishes lighting that will decrease the amount of lumens reaching the river (over the existing condition) by providing lighting fixtures that direct light away from the river and into the site.

Based on these considerations, the project will substantially improve the existing situation, and is considered to be in conformance with the intent of the RCPS.

Note Regarding Abandonment of Old Hillsdale Avenue

The proposed project includes abandonment of the adjacent segment of Old Hillsdale Avenue. Old Hillsdale, which no longer crosses the Guadalupe River, was essentially supplanted by the creation of Foxworthy Avenue, and is no longer necessary as a public street. The City is currently working with the owners of the four adjacent car dealerships and the residential project to the north to complete the transition of this segment of public right-of-way into private ownership. This portion of the adjacent street segment is ultimately expected to be divided between the Ford site and the residential project, which is currently under construction, allowing each property owner to have a slightly increased area of developable land.

Abandonment of Old Hillsdale is a condition of approval for this project, and the site plan for the proposed project is based on successful completion of the street abandonment process. The abandonment process is expected to be completed in 2003. However, the applicant has also prepared an “alternative” site plan that includes preservation of the Old Hillsdale Avenue as a public street, should the abandonment process fail to reach an unsuccessful conclusion due to unforeseen circumstances beyond the applicants’ control. The “no-abandonment” scenario eliminates the parking area behind the building but is otherwise similar to the main proposal. For purposes of clarity, the alternative site plan is not included in the final plan set for the project. The applicant will be required to submit a subsequent Conditional Use Permit Amendment to secure approval of the alternative site plan if the abandonment of Old Hillsdale Avenue is not successfully accomplished.

PUBLIC OUTREACH

Notices for the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site. Staff has been available to discuss the project with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The project site is located on a 4.5-gross-acre parcel in the CG Commercial General Zoning District.
3. The project site is currently developed with an automobile dealership.
4. The proposed project consists of demolition of the existing buildings and construction of a 65,200-square-foot automobile sales and service facility.

5. Vehicle repair and car washes are conditional uses in the City's commercial zoning districts.
6. A Mitigated Negative Declaration has been adopted for this project, which indicates that certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.
7. The proposed project conforms to the applicable setbacks of the CG Commercial General Zoning District.
8. The proposed project includes 10 feet of front landscaping. The proposed front landscaping does not include trees.
9. The City's *Commercial Design Guidelines* (CDGs) for vehicle dealerships recommend 15 feet of front landscaping, to include grass and trees.
10. The proposed project includes the demolition of all structures on the site, except for an existing free-standing pole sign that does not conform to the current Sign Ordinance.
11. The existing site conditions include razor-wire fences that do not conform to the CDGs.
12. This permit includes conditions of approval related to the existing free-standing sign and front landscaping to bring the proposal into substantial conformance with the Zoning Ordinance and the *Commercial Design Guidelines*.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the site's designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit, except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Except as noted below, development of the site shall conform to approved development plans entitled "Friendly Ford," dated April 17, 2002 (last revised August 25, 2002), on file with the Department of Planning Building and Code Enforcement.
2. **Adjustment Required.** Within 60 days, and prior to issuance of a Building Permit, the applicant is required, as a condition of approval of this permit, to secure and agree to

implement a Permit Adjustment showing the following items, to the satisfaction of the Director of Planning.

- a. **Landscape Plan:** The width of the front landscaped area shall be increased from 10 feet to 15 feet. The Landscape Plan shall include trees in the front setback. The trees shall be of a type with a substantial canopy, planted approximately 25 feet on-center.
 - b. **Signs:** The existing free-standing pole sign shall be noted as "to be removed" on the plans. Replacement signs shall conform to the Sign Ordinance. Details of the replacement signage may be included in this Adjustment or may be reviewed under a separate Adjustment.
 - c. **Driveway:** The Site Plan shall be modified to eliminate the proposed curb returns on the driveway near the middle of the project's Capitol Expressway frontage, consistent with the configuration shown on the Grading and Drainage Plan.
 - d. **Parking layout:** The parking layout near the rear of the site shall be modified so that all manhole covers are unobstructed, to the satisfaction of the Director of Planning and the Director of Public Works.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
 4. **Signs.** No new signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning. The existing pole sign shall be removed.
 5. **Fences.** Fences on the site shall be as shown on the approved plans, and shall conform to the Commercial Design Guidelines. Barbed wire and/or razor wire are not permitted.
 6. **No Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
 7. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
 8. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
 9. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
 10. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored in full compliance with the City's Hazardous

Material Ordinance and the Hazardous Material Management Plan for the site approved by the San José Fire Prevention Bureau.

11. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
12. **Tree Removals.** No tree removals are approved under this permit. All tree removals on this site are subject to review by the Director of Planning. No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
13. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. This includes the staging of equipment and construction personnel.
14. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
15. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 286-0968 for further information.
16. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Section 20.44.200 of the San José Municipal Code.
17. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-01291) to the satisfaction of the Director of Public Works:
 - a) **Public Works Development Review Fee:** An additional Public Works Review Fee is due. Based on established complexity criteria, the project has been rated medium complexity. Prior to the project being cleared for the hearing and approval process, a sum of \$1547.50 shall be paid to the Department of Public Works (Room 308).
 - b) **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - c) **Geology:**

- i) A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii) The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the Project Engineer and/or City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Spec. Publ. 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d) **Sanitary:**
 - i) All public sanitary manholes within Hillsdale Avenue shall remain accessible and clear of any obstructions, including parked vehicles.
 - ii) Locations of new laterals shall be shown for final review and comment prior to construction.
- e) **Storm:**
 - i) All public storm manholes within Hillsdale Avenue shall remain accessible and clear of any obstructions, including parked vehicles.
 - ii) The release path must be paved.
 - iii) On-site ponding must be less than one foot.
 - iv) Finished floor elevations must be one foot higher than overland release elevation.
- f) **Flood: Portion of the property in Zone A**
 - i) Submit plans to the Santa Clara Valley Water District (SCVWD) for review and approval. A SCVWD Permit is required for this project.
- g) **Street Vacation:**

- i) The vacation of a portion of Hillsdale Avenue may be required. The street vacation process requires further discretionary approval by the City Council and the project will be subject to this process prior to Public Works Clearance. The applicant did not provide a preliminary title report for the subject street. As a result the property may be subject to a sale and disposition process, which may involve public auction.
- ii) If the vacation of Hillsdale Avenue is not feasible the applicant is required to perform the following:
 - a) Remove and replace broken or uplifted curb, gutter, and sidewalk along the project frontage.
 - b) The public improvements along Hillsdale Avenue shall remain accessible to the public. The fence and gates shall be located at the back of the sidewalk.
- h) **Electrical:** Install electrolier(s) on project frontage to the satisfaction of the Director of Public Works.
- i) **Landscape:**
 - i) Install street trees within the public right-of-way along the entire street frontage per City standards.
 - ii) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
 - iii) Contact the City Arborist at (408) 277-2756 for the designated street tree.
- j) **Street Improvements:**
 - i) Change the proposed westerly driveway on Capitol to a standard City of San Jose driveway.
 - ii) Reconstruct the entire easterly driveway, including the portion along the adjacent parcel.
 - iii) Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - iv) Close unused driveway cuts.
 - v) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.

- vi) Proposed driveway width to be 26'.
 - vii) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - k) **Minor Improvement Permit:** The applicant will be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes plans, insurance, bonds/deposit certificate, and engineering and inspection fees.
18. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - b. *Construction Plans.* This permit file number, CP02-026, shall be printed on all construction plans submitted to the Building Division.
 - c. *Permit Adjustment.* Refer to condition No. 2.
19. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
20. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
21. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to

- remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
22. **Lighting.** Outdoor lighting on the site shall conform to the City's Outdoor Lighting Policy. Low-pressure sodium (LPS) lighting fixtures shall be installed in all areas that are not used for display of for-sale vehicles. High-intensity, non-LPS outdoor lighting may be used in vehicle display areas as shown on the approved plan set, and shall be dimmed no later than 10:00 P.M. each night.
23. **Off-Site Loading/Unloading and Vehicle Storage Prohibited.** All loading and unloading of vehicles, parts, equipment, and other delivered goods shall take place on-site. No loading, unloading, staging or parking/storage of vehicles associated with the project shall take place in the public right-of-way.
24. **Restrictions.** The following functions and activities are prohibited on any portion of this property, and within any building approved under this Permit.
- a. Dismantling of new and used vehicles for purposes of parts salvage
 - b. Service and/or repair activities in the outdoor areas of the project site
 - c. Automotive body work and painting
 - d. Outdoor storage of stock, equipment, materials, and refuse unless otherwise shown on the approved plan set
 - e. Public address systems of any type
25. **Employee Education of Operational Hours and Restrictions.** The applicant shall, on an ongoing basis, educate all employees of the above stated restrictions on loading/unloading and service activities, and shall post rules and regulations in a readily visible location.
26. **Lock Boxes.** The project development shall provide lock boxes to the satisfaction of the Chief Building Official and Fire Chief.
27. **Contact Person in Case of Disturbance.** The applicant shall permanently display, at a readily visible location, a contact name and phone number to report nuisance activities and noise disturbances during hours of construction, in contrasting letters one inch in height.
28. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas

shall be maintained in a manner to discourage illegal dumping. No outdoor storage is allowed/permitted unless designated on the approved plan set. Used vehicle parts, lubricating oils and greases, drums, cartons, crates, or other packing materials shall be stored either within a project structure or in a designated refuse area as shown on the approved plan set. Wrecked vehicles may not be stored on any portion of the subject property. Vehicles may not be stored on the property for purposes of parts salvage.

29. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
30. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
31. **Amplified Sound.** No amplified sound shall be audible from adjacent properties. All outdoor paging of employees shall be achieved with individual devices given to employees. No outdoor paging systems are to be installed.
32. **Mechanical Equipment.** All roof equipment, including satellite antenna dish, shall be screened from view. Acoustical shielding of mechanical equipment by a roof parapet on the north side of the structure shall be provided to meet the 55 DNL noise guideline. No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DNL at the residential property line. Prior to final occupancy of the project, the applicant shall provide engineering and acoustical specifications for project mechanical equipment to be reviewed by an acoustical specialist to ensure that the project will be in compliance with the City noise standards.
33. **Noise Mitigation.** Construction of all structures approved by this permit shall include implementation of the noise mitigation measures for interior noise controls as identified in the noise report for the project prepared by Stan Shelley & Associates, as required by the Director of Planning.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked,

suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.